IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.3067 OF 2006

My Haldyn Glass Limited. ...Petitioner.
Vs.
The Commissioner of Labour & Ors. ...Respondents.
....
Mr. V.P. Vaidya for the Petitioner.
Mr. N. M. Ganguli for Respondent No.3.
Mr.M. D. Nagle for Respondent No.4.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 18, 2006.

P.C.

The Commissioner of Labour has in exercise of the powers conferred by Section 25-O(5) of the Industrial Disputes Act, 1947, referred for adjudication, the dispute relating to the closure of the industrial establishment of the Petitioner.

On behalf of the Petitioner, the order of the Commissioner of Labour has been challenged on the ground that a settlement was entered into by the Petitioner with the Third Respondent on 22nd July 2006 and that in pursuance of the settlement all the workmen have accepted their dues. Hence, it

was submitted that the management ought not to be foisted with the burden of justifying the closure of the establishment in a proceeding before the Industrial Tribunal. Sub-section (4) of Section 25-O of the Industrial Disputes Act, 1947 provides that an order of the appropriate Government granting or refusing to grant permission for closure shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for a period of one year. Sub-section (5) empowers the appropriate Government either on its own motion or on the application made by the employer or any workman to review its order granting or refusing to grant permission under Sub-Section (2) or refer the matter to a Tribunal for adjudication. These provisions, therefore, clearly establish that the order of the appropriate Government granting or refusing to grant permission for closure is final only subject to the provisions of sub-section (5). In other words, the finality attached to the order would be subject to the appropriate Government reviewing its order or, as the case may be, referring the matter to the Tribunal for adjudication. Once a reference is made before the Tribunal for adjudication, it is only subject to the decision of the Tribunal that the question of closure would attain finality.

In the present case, the permission for closure was granted on 3rd April 2006. The Maharashtra General Kamgar Union (the Third Respondent) submitted an application on 12th April 2006 seeking either a review of the order or a reference to adjudication. On 22nd July 2006 the Petitioner entered into a settlement with the Maharashtra Rajya Rashtriya Kamgar Sangh (the Fifth Respondent) under which apart from the closure compensation, the management agreed to pay an amount of Rs.15,000/- to the workmen over and above their terminal dues. The Bharatiya Kamgar Sena has appeared in these proceedings. Bharatiya Kamgar Sena who was impleaded as the Fourth Respondent is a recognised Union. Counsel appearing on behalf of the Fourth Respondent has drawn the attention of the Court to the fact that on 16th July 2004 an order was passed by the Industrial Court in Complaint (ULP) 120 of 2003 restraining the management from negotiating, bargaining or signing any settlement with any other Union save and except the Fourth Respondent herein, till the decision of the complaint. Though the contention of the Petitioner is that the Fourth Respondent should establish before this Court that it has any substantial membership,

the fact remains that the Fourth Respondent is a recognised Union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Maharashtra Amendment to Sub-section (1) of Section 18 of the Industrial Disputes Act, 1947 interdicts the employer from entering into an agreement with any other Union other than the recognised Union other than an agreement with regard to dismissal, discharge, termination, or suspension of an employee. Therefore, the submission of the Fourth Respondent that the settlement with the Third Respondent was entered into in the teeth of the interim order of the Industrial Court dated 16th July 2004 in Complaint (ULP) 120 of 2003 and contrary to the provisions of Section 18(1) of the Industrial Disputes Act, 1947 cannot be brushed aside. There is merit in the submission urged on behalf of the Fourth Respondent. In the present case, therefore, when a reference has been made by the Commissioner of Labour for adjudication before the Industrial Tribunal, intervention of the Court under Article 226 of the Constitution is clearly not warranted. At this stage, the Court would not be justified in passing an order, the effect whereof is restraining the Industrial Tribunal from adjudicating upon the reference. Undoubtedly, it would be open to the Petitioner to urge

all defences available in law before the Tribunal including the submission that all the workmen had received their dues and have left service. The Petition is accordingly dismissed.

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